

An irrevocable standby letter of credit ("Letter of Credit") in form and substance acceptable to Delmarva, from an Issuer with a senior unsecured long-term credit rating (un-enhanced by third-party support) equivalent to A- or better as determined by both Standard & Poor's or the equivalent by Moody's or Fitch is the preferred form of security. Subject to other restrictions described herein, Delmarva will accept a guarantee from an investment grade rated entity. Security provided in ~~this~~the form of a Letter of Credit shall be consistent with the PPA and include a provision for at least thirty (30) days advance notice to Delmarva of any expiration or earlier termination of the security so as to allow Delmarva sufficient time to exercise its rights under said security if bidder fails to extend or replace the security. Such security must be issued for a minimum term of 2 years or in the event the remainder of the PPA term is less than 12 months, the security must be issued for a minimum term of one year.

Delmarva may accept other forms of security in its discretion. Unsecured credit as described in section 3.4.3 may be counted against the total required security posting after the delivery start date in the PPA.

### 3.4.3 Bidder Credit Limit

The amount of unsecured credit shall be capped at \$50,000,000 for the most credit-worthy entities, and shall decline as the credit rating of the bidder declines. Delmarva shall determine the maximum amount of credit allowed as a share of the company's total tangible net worth, depending on the firm's senior unsecured credit rating, as shown below. The amount of unsecured credit allowed for the PPA shall be the product of the total tangible net worth (TNW) times the TNW Percentage shown below, or the unsecured credit limit presented below, whichever is lower, up to the amount of the cap stated above.

S&P Rating	Moody's Rating	Fitch Rating	TNW Percentage	Bidder Credit Limit (Cap)
AAA to AA-	Aaa to Aa3	AAA to AA-	10%	\$50,000,000
A+ to A-	A1 to A3	A+ to A-	8%	\$40,000,000
BBB+ to BBB	Baa1 to Baa2	BBB+ to BBB	6%	\$30,000,000
BBB-	Baa3	BBB-	4%	\$20,000,000

If there is a difference among the ratings of the listed rating agencies, the lowest rating shall be used. Bidders must either have a credit rating from one of these three agencies or have a guarantor for the amount of security required that is considered credit-worthy

by one of these three agencies, or provide 100% of the required security in a letter of credit.

The Bidder Credit Limit shall be recalculated and the form of security posting adjusted based on the bidder's most recent fiscal year end audited financial statements or within 5 business days of the bidder becoming aware of any change in the bidder's senior unsecured debt rating.

#### 3.4.4 Minimum Liquid Collateral

A minimum of 10% of the security posting must be provided in the form a Letter of Credit and any additional security posting in excess of the Bidder Credit Limit shall also be in the form of a Letter of Credit. Further, bidders should note that Company reserves the right to protect itself against counterparty credit concentration risk, and as such, may require bidder to post acceptable credit support in the form of an Irrevocable Standby Letter of Credit in amounts in excess of those described above to maintain compliance with Delmarva's credit policies.

#### 3.4.5 Reevaluation and Term of Security

If at some point in time after posting security the rating (as measured by Standard & Poors, Moody's or Fitch) of the entity guaranteeing the security changes but remains investment grade, the appropriate mix of the security (combined liquid collateral and unsecured credit) will be determined based on the above criteria. If at any time the rating falls below investment grade (BBB- or its equivalent), Delmarva may at its option require the project owner to post additional security of an acceptable nature and level, subject to the applicable security caps.

In sum, if the exposure of Delmarva's SOS customers is determined at some point after the delivery date under the PPA to be \$100,000,000, then the bidder must first provide \$10,000,000 (10%) in liquid collateral. Next, if the bidder has a high tangible TNW and is rated A-, they may reduce the liquid credit requirements by their credit limit of \$40,000,000. The remaining liquid security required would be \$100,000,000 minus \$10,000,000, minus \$40,000,000, or \$50,000,000-50,000,000; provided this amount may not exceed \$200/kW or \$80,000,000 for a project with a 400 MW contract capacity (the limit would be \$80/kW or \$32,000,000 for an intermittent renewable energy project with a 400 MW contract capacity).

[As part of this process, Delmarva reserves the right to request further financial information from bidder(s) or its credit support providers. Delmarva may require

the successful bidder(s) (or its credit support provider(s)) to post a form of acceptable credit support to ensure the bidder's performance under the terms of the Proposal. The amount of acceptable credit support, if required, will be in an amount determined by Delmarva's evaluation of the bidder's credit condition in conjunction with a determination of the financial and performance obligations of the bidder under the terms of the Proposal. [Delmarva should explain why it is necessary and equitable to have such broad additional discretion regarding credit support or propose that this be deleted or limited].

#### **4. TECHNICAL REQUIREMENTS AND PREFERENCES**

From a technical perspective, Delmarva requires all facilities to be in compliance with PJM Manual 14D, Generator Operational Requirements, Revision 7, effective date June 19, 2006, and the Conectiv Power Delivery - Technical Considerations Covering Parallel Operations of Customer-Owned Generation (May 9, 2003).

## 5. SCHEDULE

The overall schedule for this RFP is provided below, and described in this section.

EVENT	DATE/DEADLINE
Issuance of RFP by Delmarva	November 1, 2006
Submission of written questions and registration for pre-bid meeting	November 10, 2006
Pre-bid conference	November 15, 2006; <u>access provided for bidders to PPA</u>
Notice of Intent due <u>Access provided for bidders to PPA</u>	November 22, 2006
Final questions from bidders due	November 29, 2006
Filing of IRP by Delmarva	December 1, 2006
Recommended submissions date for proposals	December 1-8, 2006
Non-responsiveness screen completed for proposals submitted by December 8, 2006	December 15, 2006
Complete proposals due – all bidders	December 22, 2006
Threshold and Detailed proposal evaluation	December 22, 2006 onwards
Notification of Acceptance for Detailed Evaluation	By January 5, 2007
<del>Delmarva recommendation to public and Independent</del> <u>Consultant recommendations to State</u> <u>agencies</u> <u>Agencies</u>	Early February 2007
<del>Public agency</del> <u>State Agencies</u> decision	By February 28, 2007
Regulatory approval of PPA(s)	By June 30, 2007
Project On-Line Date	June 1, 2013 or earlier

### **5.1 PRE-BID CONFERENCE - November 15, 2006**

Two weeks after the issuance of the RFP, on November 15, 2006, a pre-bid conference will be held near Newark, Delaware. Notice of this pre-bid conference will be filed with the RFP, and the specific time and location of this meeting will be provided to each prospective bidding party who registers on or before November 10, 2006. Delmarva reserves the right to limit the number of prospective bidders' representatives in attendance. If this is necessary, Delmarva will provide sufficient advance notice to all prospective bidders affected. At this conference, Delmarva will make an in-person presentation of this solicitation process, respond to pre-submitted questions and comments, and address questions from the floor. At this meeting, Delmarva will review an example of how they intend to score selected criteria. Pre-submitted questions must be received prior to November 10, 2006 to be discussed at the pre-bid conference. The State Agency representatives and their Independent Consultant may also attend the pre-bid conference.

### **5.2 NOTICE OF INTENT (NOI) – November 22, 2006**

By November 22, 2006, each prospective bidding party must advise Delmarva of its intent to submit a proposal by completing the "Notice of Intent to Bid" form included as Form A in Attachment 2 of this RFP and submitting as per the instruction on the form. Future correspondence by Delmarva regarding this RFP will be forwarded only to parties that express an intent to submit a proposal.

While this NOI would not obligate potential Bidders to submit a proposal, it will provide Delmarva with an early indication of the number of proposals it must be prepared to evaluate. In addition, when they file an NOI, potential bidders shall specify the total capacity of the project (in megawatts) and the point(s) at which the project(s) would interconnect with the transmission grid in Delaware, and provide other information, as specified on Form A in Attachment 2, so that Delmarva may begin preliminary analysis of the transmission impacts of such project(s), as indicated in Section 5.3. Delmarva expects that only serious potential bidders will submit an NOI.

#### **5.3 TRANSMISSION IMPACT STUDY - By November 22, 2006**

Bidders must provide information required for Delmarva to undertake a transmission impact study on the Notice of Intent to Bid form with this RFP and return it to Delmarva by November 22, 2006. This form shall provide basic information about the project necessary for Delmarva to carry out a preliminary transmission analysis, including the size of the project, the interconnection point, and basic information on the intended operation of the project.

Bidders agree that Delmarva's assessment would be preliminary. The final network transmission cost impact would be determined by PJM's feasibility and impact studies.

#### **5.4 RFP RESPONSE DEADLINE - December 22, 2006**

All proposals must be received on the RFP web site in Section 6.3 by 5:00 p.m. Eastern Prevailing Time on December 22, 2006. Bidders may not initiate any modifications to their proposal(s) after December 22, 2006. Bidders are strongly encouraged to submit their proposals before December 22, 2006 to facilitate the evaluation process.

#### **5.5 NOTIFICATION OF NON-RESPONSIVENESS - For proposals filed early**

All proposals will be given an initial examination for responsiveness. Any bidder submitting a proposal by December 8, 2006 that is found to be non-responsive will be contacted by December 15, 2006 and shall be given

seven calendar days to correct the deficiency(ies). Failure to respond within the required time, or failure to adequately correct the proposal's deficiency(ies) will result in rejection of the bid. Proposals received after December 8, 2006 can not be assured that the bidder will be contacted by Delmarva for non-responsiveness or, if contacted, that the bidder will have sufficient time to correct the deficiency(ies).

Bidders may also be disqualified at any time during the solicitation process for non-responsiveness.

#### **5.6 NOTICE OF DETAILED EVALUATION - January 5, 2007**

Bidders whose proposals are selected for consideration in the Detailed Evaluation phase will be notified by January 5, 2007, and may be contacted to address any questions Delmarva has about the proposal. Bidders will be required to respond to Delmarva's questions within three business days unless otherwise specified.

Delmarva expects to negotiate with highly-ranked bidders to obtain better terms and mutually advantageous changes to proposals. Bid prices (including pricing formulas) will not be the subject of negotiations.

#### **5.7 NOTIFICATION ~~OF WINNING TO~~ BIDDER(S)**

~~Delmarva anticipates completing its IRP evaluation process no later than February 28, and the Independent Consultant anticipate completing their evaluations in time to submit their reports, including their recommendations, in early to mid-February 2007. At this time the winning recommended bidder(s) will be notified of their preliminary selection, subject to the outcome of the IRP process. Unsuccessful bidders will be notified of the rejection of their as will bidders whose proposals are not recommended for approval.~~

#### **5.8 NEGOTIATIONS AND AWARDS**

~~Upon completion~~As part of the IRP process, contract negotiations may begin detailed evaluation process. Delmarva will attempt to address and potentially resolve contract exception issues for high-ranking bidders as time permits. If the State Agencies authorize and/or direct Delmarva to finalize contract negotiations with a specific bidder(s), Delmarva will do so. The negotiation process must be organized and conducted so that the process is completed in a timely manner. The negotiating team will consist of Delmarva staff members, and outside technical and legal experts, as deemed necessary by Delmarva. The final PPAs must have all required Company corporate approvals. The Independent Consultant may also participate in this process.

#### **5.75.9 STATE AGENCY APPROVAL**

Once the ~~IRP process is complete and~~ PPAs have been executed, the PPAs must be presented to the appropriate ~~public agencies~~ State Agencies for approval.

### **6.0 PROJECT ADMINISTRATION**

#### **6.1 RECEIPT OF PROPOSALS**

Prospective bidders must file electronic applications at the secure web-site identified below. The State Agencies' Independent Consultant shall have access to the secure website. For any materials which cannot be submitted electronically, ten bound paper copies should be delivered to:



Lezael Haynes  
ICF International  
9300 Lee Highway  
Fairfax, VA 22031

In addition, one bound and one unbound copy should be delivered to the Independent Consultant at the following address:

Jonathan Winer  
La Capra Associates  
20 Winthrop Square  
Boston, MA 02110  
(617) 557-9100

These materials shall be delivered no later than 5:00 pm Eastern Prevailing Time on December 22, 2006. Neither Delmarva nor ICF is responsible for the failure of delivery services to provide such materials before the deadline. Note that:

- . Proposals will not be accepted after the deadline.
- . Bidders will receive notice of Proposal receipt.
- . Bidders providing proposals on or before December 8, 2006 will be advised of any missing material and given the opportunity to file this material prior to the final deadline date. Only the material previously identified as missing will be accepted at this time.

## 6.2 COMMUNICATIONS

The Evaluation Team (the Team) will consist of staff from Delmarva and the Consultant. ~~Members of the Team are prohibited from working on~~ Other than the procedures addressing affiliate proposals or Company's self-build and/or company's affiliate proposals in response to this RFP, or communicating with members of Company's Self-Build or its affiliate's Proposal team. Additional self-build proposals set forth in Section 2.6, the procedures governing the Company's communications are as follows:

### **Communications between Evaluation Team Members and Bidders**

The Company regards communication between the Team and the bidders as confidential among the parties required to evaluate the proposals, which includes but may not be limited to the Team, the Independent Consultant and the ~~public agencies responsible for reviewing them. The Team~~ State Agencies. The Team (as well as the Independent Consultant and the State Agencies) is not responsible for information regarding their proposals that the bidders may release.



In addition, bidders should clearly identify each page or section of information in their proposals considered by bidder to be confidential or proprietary. Delmarva reserves the right to release proposals to agents or consultants of Delmarva for purposes of proposal evaluation. Delmarva's disclosure standards and policies will contractually bind such agents or consultants. In addition, Delmarva will release proposals and related submittals to the Independent Consultant retained by the State Agencies for purposes of proposal evaluation; the Independent Consultant will make reasonable efforts to preserve bidders' confidential information.

Regardless of the confidentiality, information contained in proposals may be subject to disclosure to and review by appropriate state jurisdiction, or any other governmental authority or judicial body with jurisdiction relating to these matters or agents thereof and may be subject to legal discovery. Under such regulatory and legal circumstances, Delmarva will make all reasonable efforts to preserve bidders' confidential information, including requesting that it be filed under seal.

The Company's responses to requests for information (RFIs) from bidders will be provided to all bidders by posting the RFI and the response on the private section of the RFP website, unless the question specifically pertains to a defined and confidential project-specific issue. In that case, the Company may respond only to the specified bidder. Proposals will be scored only on the basis of written material formally submitted to Company. Any information the Company receives from by other means will not be considered unless confirmed in writing by the bidder.

RFIs from bidders shall be submitted no later than 5:00 pm on November 29, 2006, to allow sufficient time for Delmarva to respond and enable Bidders to act upon that information in time to submit their proposals.

#### **Web-Site Communication**

Throughout this process, bidders wishing to contact the Team shall do so through the web site identified below. Except for the pre-bid meeting, this web site shall be used for all contact with the Team on this solicitation, including questions that bidders wish to submit and for their proposals. Access to the public portion of the web site will be provided to all stakeholders (e.g., to ask questions prior to the due date for proposals). There shall also be a private, password-restricted section of the web site that is available only to those entities that have submitted a Notice of Intent to Bid, which shall be due no later than November 22, 2006.

The public website for general information and questions is \_\_\_\_\_. On that website is a link to the private section, which requires a password to access.

Potential bidders shall not seek to influence Delmarva's or the Independent Consultant's evaluation of proposals in any way during the period from the issuance of this RFP to the completion of the contracting process under a PPA. Attempts to do so may be grounds for disqualification from the review process.

**Requests for Information (RFI) from the Company**

The Company reserves the right to request bidders to clarify information in their Proposals. The Team will forward any RFIs to the affected bidder. The bidder will have three business days to respond to the RFI. Once the RFI response is received, it will be distributed to relevant reviewers to complete the analysis of the bidder's proposal. If a bidder elects not to respond to an RFI, its Proposal may be withdrawn from consideration in the RFP process.

### 6.3 DOCUMENTATION

The Company shall maintain documentation, including evaluation sheets and analysis, used as the basis for ~~selecting~~recommending preferred proposals. Such documentation may be used to provide support before the Delaware Public Service Commission to demonstrate that Company's proposal ~~selection~~recommendation process resulted in an appropriate portfolio of generation resources and to demonstrate that the evaluation of proposals was fair. Each member of the Team will provide the Consultant with a copy of their evaluation sheets and analyses of each proposal, and the Consultant will maintain an accurate database of the rankings and associated scores. In addition, Team ~~member~~members shall maintain documentation of issues that relate to each proposal. These documented issues may be addressed in the detailed evaluation process with the selected bidders- and/or the Independent Consultant. The Independent Consultant will use a similar process.

### 6.4 DISQUALIFICATION OF BIDDER'S PROPOSAL

Proposals may be disqualified if they do not meet the Non-Responsive or Threshold Criteria described in the RFP. In addition, if a bidder does not respond in the timeframe indicated by Company to an RFI from Company, or attempts to communicate with the Delmarva Evaluation Team in ways not permitted under this RFP, such bidder's proposal may be disqualified at that time.

### 6.5 APPROVAL FOR ELIGIBLE PROPOSALS

During the proposal evaluation process, the Team and the State Agencies, supported by the Independent Consultant, will determine whether or not a proposal will proceed to the next phase at several stages, including the review of the Non-Responsive Criteria and Threshold Criteria evaluation- ~~the detailed Price and Non-Price evaluation, the selection of the final award group, and the IRP process.~~ Elimination of any project at any point in the evaluation process is subject to Independent Consultant review and State Agency approval. While Delmarva and the Independent Consultant may make recommendations regarding selection of a final award group, the State Agencies will make the decision whether a proposal, if any, should result in a PPA to be executed by Delmarva.

### 6.6 NON-DISCRIMINATION POLICY

Throughout the RFP evaluation and negotiation processes, Delmarva will not discriminate between, or grant preferences to any bidder based on race, gender, ethnic origin, creed, or religion, in accordance with legal requirements. Company's consideration, evaluation, and selection of

proposals shall be entirely based on the merits of each Proposal as set forth by the RFP document, and not upon unrelated factors.

## DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Ancillary Services” shall have the meaning ascribed thereto in the PJM Agreements.

“Business Day” means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time (“EPT”).

~~“Buyer Downgrade Event” means that Buyer’s (or Buyer’s Guarantor’s) Credit Rating is less than BBB by S&P, BBB by Fitch or Baa3 by Moody’s.~~

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or Fitch.

The “Delivery Point” for ~~contract~~ energy shall be the project’s Interconnection Point in the Delaware portion of the Delmarva Zone. The Interconnection Point will be the PJM bus to which the generator is electrically connected, or the closest location thereto monitored for Locational Marginal Price by PJM.

“Delmarva Zone” means that aggregate of busses as listed on the PJM website and aggregated by Delmarva.

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“Fitch” means Fitch Investor Service, Inc. or its successor.

“Guarantor” means any party, who may agree to guaranty Seller’s financial obligations under this Agreement pursuant to an agreed on guaranty agreement, recognizing that such a party will be obligated to meet Buyer’s credit requirements for Seller.

"kWh" means one kilowatt of electric power over a period of one hour.

"Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a senior unsecured credit rating of at least A- from S&P or A3 from Moody's and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank's Credit Rating is downgraded by any increment; ~~or if the issuing bank's Current, Quick, Return-on-Assets, or Price/Earnings ratios diminish (reflecting the financial stability of the bank); or if the Party determines, for any reason, that the issuing bank's position has deteriorated,~~ then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

"Moody's" means Moody's Investor Services, Inc. or its successor.

"Network Integration Transmission Service" shall have the meaning ascribed to it in the PJM Agreements.

"PJM" means the PJM Interconnection, LLC or any successor organization thereto.

"PJM Agreements" means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents, or any successor, superseding or amended versions that may take effect from time to time.

"PJM Operating Agreement" means the Operating Agreement of PJM or the successor, superseding or amended versions of the Operating Agreement that may take effect from time to time.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

"Standard Offer Service Load" or "SOS Load" means the total sales at the retail meter, plus Unaccounted For Energy, expressed in MWh or MW, as appropriate, for a particular class(es) of retail customers being served by Buyer pursuant to the PSC Settlement, as such sales vary from hour to hour, in Buyer's Delaware franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. For purposes of clarification, SOS Load shall not include changes in the Buyer's Delaware service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Delaware or a result of a significant franchise territory swap with another entity which has a franchised service territory in Delaware.

“Tangible Net Worth” or “TNW” means an entity’s total assets (exclusive of intangible assets), minus that entity’s total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission.

“TNW Amount” shall equal the product of the applicable TNW Percentage and an entity’s Tangible Net Worth.

“TNW Percentage” means the percentage determined pursuant to Section 3.4.3 (Bidder Credit Limit) that is multiplied by an entity’s Tangible Net Worth to determine that entity’s TNW Amount.

“UCAP” means “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

“Unsecured Credit” means an amount that is the lower of: (i) the relevant Unsecured Credit Cap; or (ii) the relevant TNW Amount, as determined pursuant to Section 3.4.3 (Bidder Credit Limit).

“Unsecured Credit Cap” shall have the meaning ascribed to it in Section 3.4.3.

“Variable Interest Entity” shall mean any entity subject to FIN 46.



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September 27, 2006 1:39:47 PM

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Rendering set	Standard

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